DOCUMENT RESUME

ED 192 413 CS 503 051

AUTHOR Ferris, Charles D.
TITLE The First Amendment in a Changing Communications World.
PUB DATE Apr 80
NOTE 14p.; Paper presented at the Annual Meeting of the National Association of Broadcasters (58th, Las Vegas, NV, April 1980).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Broadcast Industry; *Federal Regulation; *Freedom of Speech; *Government Role; *Technological Advancement; *Telecommunications
IDENTIFIERS *Federal Communications Commission

ABSTRACT

In this address, the chairman of the Federal Communications Commission (FCC) reviews commitments he made as he took office and presents some of his views on the broadcasting industry, government regulation, and the overall communications environment. He reiterates his opposition to program censorship and notes that the FCC has been successful in preventing control of speech on radio and television. He notes that a policy of zero-based regulation has been followed by eliminating third class license testing requirements, changing first class operators' job requirements, eliminating hundreds of regulations, and developing a new approach to all renewals. Children's programing is an area in which the chairman feels that the marketplace has failed to provide adequate programing and in which the FCC may reduce barriers to alternative media that want to enter the marketplace with specialized services. He notes the changing world of communication and predicts that existing stations will adapt to new markets, new technologies, and innovations in broadcasting with the same skill that radio adapted to television during the last few decades. Believing that changes in regulatory policies are inevitable, he urges broadcasters not to resist new services, new entry, and new market conditions. (MKM)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED192413

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

FOR RELEASE AFTER
12:00 NOON P.S.T.
(3:00 E.S.T.)
April 16, 1980

30554

"The First Amendment in a Changing Communications World"

An Address by
Charles D. Ferris
Chairman, Federal Communications Commission

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Charles D. Ferris

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Before
The 58th Annual Convention
of the
National Association of Broadcasters

Las Vegas Hilton
Las Vegas, Nevada

Wednesday, April 16, 1980
12:00 Noon, P.S.T.

C SG 0305/

It's a pleasure to be back with you in Las Vegas at the NAB's Annual Convention.

Today I would like to revisit some of the things I said two years ago when I made my first speech as FCC Chairman -- six months after I took office -- to this group in this same place. I believe I have made good on those commitments to you and to the American public.

Then I would like to share with you some of the things that I have learned since our first meeting about you and the broadcasting industry, about government regulation, and about the overall communications environment. Hopefully we are all a little wiser now.

Two years ago, I stated what I expected to be one of the major themes of my administration: a commitment to you to resist the temptations of program censorship. These temptations are conveyed to me daily in hundreds of letters seeking varying degrees of direct involvement by the FCC.

I believe we have been successful in keeping the government from filtering the language and ideas you present. As a lawyer, but more so as a citizen with some appreciation of the role of government, the rights of the individual and how the First Amendment sorts out the interplay of each, I find no sympathy for the exercise of prior restraint on speech. It was without qualms, following the "seven dirty words" Pacifica case, that I publicly urged the Commission to read that precedent very narrowly, and not use the Court's decision as a license to witch hunt for "inappropriate" language.

I believe we have kept that commitment. I still believe we should leave to the good judgment of radio and television programmers the manner of presentation of entertainment and information. Rather than creating a list of FCC prohibitions, I see more value in encouraging an environment of innovative expression and a full discussion and ventilation of the ideas that may trouble and provoke -- in short taking the chances guaranteed a free speaking people by their Constitution.

I would rather risk the utterance of a few bad words than foster a society of governmentally fettered ideas. You have my pledge to continue to resist the pressures on the FCC to engage in more control of speech on radio and television. We haven't -- and we won't.

I also pledged to you to follow a policy of zero-based regulation. That promise, too, has been kept.

We have, for example, eliminated the third class license testing requirement and freed first class operators from being required to perform routine operations at many TV and AM stations. We have simplified or eliminated literally hundreds of regulations that became encrusted on the books over the years, including those requiring you to notify us before making minor changes in your facilities.

Some of these changes may seem mundane to the outside world. But I know you in the industry understand the costs of compliance with outmoded rules.

As you know, we are also in the midst of a more comprehensive deregulation rulemaking in radio. This effort was instituted precisely to meet the concerns I expressed two years ago to you -- that perhaps we were maintaining unnecessary regulatory burdens in this area "for ceremonial purposes alone." As the staff and the Commissioners sift through the many

comments filed in that docket, we will seek ways to retire useless regulatory exercises. The Commission is, I assure you, aware that unnecessary regulation benefits no one.

The Broadcast Bureau is also hard at work on a new approach to all renewals, both radio and television, which would substantially reduce paperwork and move towards a simplified technique to check compliance with Commission policies. In the final analysis, this approach may serve the public better than our existing cursory review of nearly 10,000 renewal applications every three years.

While we have not yet transferred the concept of substantive deregulation to television, the efforts we have made in both radio and television to expand the opportunities for new stations to be created and for new voices to be heard on those stations could help us ultimately reach that goal.

We have in the past two years instituted two effective regulatory incentives for minority ownership -- tax certificates and the distress sale policy. These twin incentives have already created a new generation of minority owned outlets -- 22 radio stations and 2 television stations. Five more television stations and six radio stations are in the distress sale pipeline. This makes a total of 35 new minority owned stations in two years.

We are trying to respond to the needs of those too long left outside the mainstream of broadcasting. We have also attempted to expand the AM band and reduce its spacing to provide more outlets, moves that have not met with wholehearted backing from this group. Yet at the same time we have tried to give existing AM stations the ability to compete to their full potential, by adopting AM stereo standards last week.

The Commission's efforts to insure minority participation and to open up opportunities for new full time radio stations -- both AM and FM --

should not be seen as threats to broadcasting. Instead, I see them as necessary steps if we are to lay the basis for reducing government regulation of broadcasters and providing full First Amendment parity of broadcasters and the print media.

I sympathize with those broadcasters who ask for full equality of treatment with their print competitors. I firmly believe that FCC policies intended to add new stations, or open new, competitive services, or provide for greater minority participation in ownership and employment, do provide a greater justification for lifting governmentally imposed programming obligations.

I feel we have made substantial progress over the past two years in our complementary objectives. For we have avoided censorship. And we have reduced regulation in favor of structural solutions that promote diversity.

If there is a critical unmet need in the broadcast marketplace -- one that demands a solution--the FCC should first ask whether the free market can provide a solution to it. But, if the marketplace is unlikely to provide a solution or has been found to have failed, then I believe the Commission can look to its radio and television licensees to determine how to address this marketplace failure.

The FCC's Children's Television Task Force staff report released last fall involved just such marketplace considerations. It tried to determine whether commercial broadcasting is likely to provide, absent regulation, adequate weekday programming service for children, particularly preschoolers.

This inquiry took a look at the total potential marketplace -- including pay cable, STV and other media -- and found hope for abundant service to our nation's children in future decades. But that prediction still left us with the difficult choice of what to do for this generation.

It has been said that civilization has but twenty years left -- in twenty years we will have either taught the next generation ways of living as a civilized people or we will have not. And we know how important television is for the child in this learning process, if only by the sheer number of hours that it keeps company with our boys and girls -- often, unfortunately, more hours than we do.

It is not my wish to have government require children's programming. My earnest hope is that commercial broadcasting will provide, without regulation, the range of programs to meet the diverse needs of our society, young and old, city and country, black, white and Hispanic.

If, however, it does not, I feel that the FCC cannot eternally forbear. That does not necessarily mean we will seek more regulation of your business. But it may mean more active FCC efforts to reduce the barriers to alternative media that want to enter the marketplace with specialized services for these audiences.

As a regulator, I subscribe to the theory that if it works, don't fix it. But, as we all know, things are changing, with cables burrowing into the ground beneath us and satellites orbiting in the skies above.

The world is not changing because of Charlie Ferris, or because of anyone else at the FCC. The world of communications, your world, is changing of its own force. The only real question is whether the Commission can or will stand in the way of this progress and competition.

I recognize your uncertainty about this new world. But although the competitive environment has changed considerably since 1934, both radio and television in America are still alive and well.

Indeed, look back on U.S. broadcasting and you will find there is much to feel confident about. The U.S. system of broadcasting is, simply, the best on earth.

The history of broadcast hardware, for example, is peculiarly American, with innovation after innovation achieved first in the United States. From the tubes of Farnsworth and Zworykin to the technology exhibited at this convention, U.S. inventors and manufacturers have made a remarkable contribution to the state of broadcast arts. Not only was the United States the first to put a man on the moon, but American technology was the first to put a color television camera up there to broadcast the moment to a waiting world.

The programs born of the innovative technology also deserve praise. For more than half a century, radio has kept this country informed, every hour on the hour. Television news over the last quarter of a century has also moved a long way, from the breezy chortle of the Camel News Caravan to the professional well-financed morning, evening and late night news programs.

Television news has grown up -- binding a grieving nation during a November weekend in 1963, sounding freedom's alarm on a Chicago night in 1968, showing us our retreat over the skies in Vietnam in 1975, reminding us last November and each day since that no American is free unless all are free.

Confronted with the unpredictable, the unconscionable, even the incredible -- television news -- like no other news medium -- has given the American viewer a proximity to the events of his times unparalleled in human

history. Television is not merely the next best thing to being there, sometimes it seems to be better.

Television has also proved to be the greatest entertainment medium in the history of man. It has proved its enduring popularity without weakening more serious entertainment forms. Indeed, the television generation seems to be more interested in serious theatre, literature, dance, and music, not less.

Given that there is so much television on, so much to watch, it is not so surprising to find that what is really special is often lost. Yet television has produced series and special long-form programming that will rank among the best of the lively arts.

Now, I realize that I might wind up with a higher audience rating if I told you that nothing in this medium or in your business and professional lives would change. I do think that the values and the vision that you have brought to our lives, the appetite for immediacy of participation in world and local events, and the journalistic explanation of them, will endure. But I cannot assure you that the FCC will erect barricades to new technologies to insure that the environment in which these messages are delivered will stay the same.

Those days are gone, and the philosophy behind that regulatory approach is not, as they say, likely to be with us next season, either.

You should take heart from the lessons of history. You who were in radio three decades ago survived and became a part of television, while radio changed its programming strategies and emerged stronger than ever. Many of you in television are now becoming a part of cable. The major networks have indicated that they plan to produce programming from other distribution markets, such as cable and home video cassettes and video discs.

You can take comfort as well from knowing that you are not alone in being part of a changing communications environment. The world of broadcasting is but one part of a larger mosaic of information carriers we at the FCC see shifting and changing.

This is an exciting time to be in the communications business. I hope we can all recognize it for the time of entrepreneurial opportunity that it is. For as satellite distribution and digital transmission break down the distinction between broadcasting and common carriage, new hybrid communications markets will emerge that will be entered by the bold among you.

Last week, we took a giant step toward the coming of an information age in which the box we now call a television set can be used for all kinds of information distribution. Linked with a computer terminal and the telephone, that box can be our window to the libraries of the world, our mail box, and our bankteller's window. It can even deliver our newspaper and tell us that our plane is going to depart late.

The telephone companies and other information providers face their future with no less uncertainty than you do. But they have, in general, greeted positively our decisions last week to open information markets to competition, realizing that they as well as the public will benefit from a more innovative, competitive environment. They have been coming to terms with new competition because they now see, I am certain, that changing market conditions create opportunities for the FCC to exercise new regulatory flexibility, and even forbear from regulating some markets.

I see some clear parallels between what is happening there, in those communications markets, and what might happen in broadcasting.

Increasing competition in programming sources may ultimately lessen the role for traditional public interest regulation of broadcasting just as increased competition in telephone services and equipment can lessen the need for the FCC's heavy regulatory hand in those fields. Our radio deregulation proceeding is an example of how the emergence of more radio outlets -- and the growth of FM and public radio -- has provided the policy basis for reexamining old FCC policies.

The 1934 Communications Act provides us with substantial flexibility to adapt to changing industry conditions. But to the extent that the Act presents any real impediment to needed policy changes, I would welcome limited legislative initiatives to eliminate those obstacles. Our radio deregulation proceeding should establish a very useful record upon which to assess the need for any such legislation in the broadcasting field.

I also recognize that new programming services and new technologies can be an important spur to more responsive programming by television broadcasters. In the past, we have relied heavily upon our licensing and comparative renewal policies to assure that public needs are met. But I am also prepared to rethink established policies in this area.

I believe we should clarify the FCC's comparative renewal policies. We need to eliminate unnecessary uncertainty for licensees who substantially serve their communities. And if we conclude we cannot establish adequate policies in this important area, I feel confident that the Congress would be receptive to recommendations for necessary changes in the Act.

In the coming year we will also be focusing more attention on the initial comparative hearing process, in both the broadcast and non-broadcast fields. That process is far too time consuming and inefficient. It must be improved.

In nonbroadcast fields comparative hearings are a serious impediment to rapid deployment of new services. That is why we are exploring the use of lotteries and other nonadjudicatory selection procedures in private radio and MDS.

Even in licensing new broadcast stations we need new methods to bring new services to the public faster. This may not please communications lawyers. But entirely new licensee selection procedures may be the only way to cut the bureaucratic gordian knot and eliminate our serious hearing backlogs.

Here, too, if we find the 1934 Act will not allow us to experiment with these new selection methods, we will not hesitate to make a detailed report to the Congress. For if we cannot make the necessary assignments of new spectrum, we cannot establish the marketplace structure that will allow us to revisit old regulatory policies.

I have spent much of the past two years talking about the exciting possibilities that can come from change. I hope that I have been correctly perceived as a prophet of hope, not doom.

I have not prodded you to be more responsive to unmet programming needs for children or minorities simply because these are important social goals. I believe you must respond to these needs to survive -- not because of regulatory pressures, but because of economic and technological pressures.

I do not believe that either the Commission or you can stem the tides of change that is fragmenting traditional viewing patterns and preferences. I urge you, therefore, to adapt to change, to exploit new opportunities, to carve out new services.

As broadcasters, you bring enormous assets and capabilities into the emerging new industry structure. You are originators of programming, gatherers and purveyors of news and information. You have ties to your viewers and your communities. You can exploit these advantages.

And if you adapt, you should also expect that regulatory policies can and should be updated or relaxed -- that our traditional licensing oversight can be made less onerous and less frequent and that broader programming discretion, and ultimately full parity of electronic and print media, can be achieved.

We will all be navigating together the uncertain straits of the future. The winds of change are blowing briskly. The future is likely to belong to those who do not sail into the wind but tack with it.

What, then, have I learned in the past two years:

-- That government regulation is not as effective a spur to diversity and consumer welfare as increased competition.

-- That our broadcasting system is valuable and worth preserving and is strong enough to survive and adapt to new challenges.

-- That we must work to achieve ultimate parity between the print and broadcast media as to their rights under the First Amendment.

-- That change and competition may be the best hope we as a nation have for assuring that broadcasters do attain that full First Amendment equality; and, finally,

-- That, whether or not we view it as a positive competitive development, change is inevitable. The genie of innovation is loose, creating new programming pathways into the home, and it cannot be stuffed back into the bottle by me or by anyone else.

I do not believe that the changes in regulatory policies I foresee can be achieved abruptly, and without some degree of uncertainty during the period of transition. But I see them as inevitable.

You can help bring about these changes by grasping the fundamental link between competition and regulatory stability. Instead of resisting new services, new entry, and new market conditions, I urge you to use them to shape a new regulatory environment in which the basic guarantee of the public's stake in broadcasting is not regulation, but a wider menu of programming choices.

The future is yours to shape. I am confident that you who are astute business people, and you who are creative programmers, will seize this as an opportunity for a new outburst of profit as well as creativity, to your own benefit, as well as the benefit of the public.